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FURTHER COMMENTS *re* FLEAGLE'S CASE*

Editors of Dicta,
Denver, Colorado.

Gentlemen:

Since writing the article "Should Ralph Fleagle Hang" in the November Dicta, I have received a letter from Judge Cunningham, counsel for Fleagle, extracts of which should be of interest to the legal fraternity in connection with the case.

"* * * at the time the agreement was entered into, the district attorney was present and participated actively in the same. * * * he stated that he had consulted with both of the judges of his district (not knowing which of the two might try the case) and that both judges had urged him to enter into the agreement.

That there may be no doubt that Mr. Erickson made this statement, I desire to quote from the testimony given by Chief Harper while on the stand as a witness called by the defendant, which testimony was not denied nor was there any attempt made to deny it.

The following questions were propounded to Chief Harper and he made the following answers thereto:

'Q. Now state just what transpired, beginning with the opening of the meeting?

A. As I recall, you (meaning the writer) wasn't present in the room at our first conference. I informed the gentlemen present of our negotiations so far as we had gone; and informed them that I believed we was in a fair way to get a complete confession from Ralph Fleagle, clearing up this whole affair.

Q. At that point, before going further, may I interrupt you with a question: Had you at that time, in your judgment, sufficient evidence to have convicted Ralph Fleagle of this bank robbery?

A. We did not.

Q. What was your belief as to his connection with it at that time?

A. At that time we weren't certain that Ralph Fleagle participated in this bank robbery but we believed that he knew all about it.

Q. And when you say, "we", who do you include in that?

A. Sheriff Aldermann (of Prowers County), Mr. Erickson (the district attorney), Mr. Hemming (the banker), and the others.

Q. All right. Now, having stated that you didn't have the evidence.

* *Editor's Note:* These comments were received by letter from Mr. Van Cise after his November article had gone to press. The letter is printed in full and, together with Mr. Kinkaid's article in this issue, throws a further sidelight upon a vexed question.

A. That part may be, I can only answer for myself, but I believed at that time that Ralph Fleagle, if he didn't actually participate in the bank robbery, knew all of the facts.

Q. Well, you and Mr. Alderman were certainly in accord upon that?

A. Yes, sir.

Q. And Mr. Erickson, or could you speak for him?

A. Up to that time I hadn't gone into details closely with Mr. Erickson regarding Fleagle, except over the telephone; I had several conversations over the telephone with Mr. Erickson.

Q. There had been no action filed against Mr. Fleagle at that time, had there?

A. I believe there had in the justice court here.

Q. All right. Proceed now with your conference.

A. Two or three days before this conference, I don't recall the exact time, Mr. Erickson and I had called each other on numerous occasions and had talked regarding the securing of a confession from Ralph Fleagle. Mr. Erickson informed me that he didn't like the idea of having to deal with one of these men, but it looked to him as though it was our only way out. But consistently refused to make such a deal until he had consulted with both district judges of this district, Judge Hollenbeck and Judge McChesney, as I recall his name. He informed me that before he would come to Colorado Springs on any such a mission he must consult with them, and get their ideas. At the meeting in Colorado Springs, Mr. Erickson there informed me of his conversation with the two district judges, and the outcome of it.

Q. What did he say, what outcome did he relate to you?

A. *Mr. Erickson informed me that both district judges urged him to make a deal with Ralph Fleagle, in order to clear this case up completely.*

Q. What did he say his attitude of mind was at that time?

A. He believed it was necessary to do so.'

* * * upon the day the agreement was entered into, the district attorney stated that on several occasions, to his personal knowledge, defendants charged with murder in Las Animas County who had made confessions were given a life sentence on pleading guilty to second degree murder and *that the judge presiding had instructed the juries to return such verdict.* The district attorney called attention to one case tried in that county in which, notwithstanding such instruction the jury had returned its verdict wherein the penalty was fixed at death, but that in the case just mentioned the proceeding was declared a mistrial and a new jury was empaneled, the case tried, the jury instructed, and a life sentence returned.

I am also inclosing an instruction which the court actually gave.

'Gentlemen of the Jury, it has developed in this case, as you probably have observed, that there is some difference of opinion between the District Attorney and one of the attorneys for the defendant, touching the terms and conditions of the agreement mentioned in the evidence. Such differences after a considerable lapse of time, are not unusual, and they do not indicate to the

court's mind bad faith upon the part of anyone connected with said agreement. As the court views the entire circumstances surrounding the agreement aforesaid, this difference of opinion seems to be more apparent than real. The defendant and his attorney, I think it may be fairly assumed from the evidence, believe the promise to be that the former would not receive the death penalty, and, so believing the defendant made his confession which fully cleared up the mystery surrounding the tragedy in which he took part, and has brought to the bar of this court three of the four parties guilty of it, and disclosed the identity of the fourth party. You are further instructed that evidence of such compact and confession, and matters incident thereto, are circumstances to be taken into consideration by you in determining what punishment should be fixed by you and your verdict if you find the defendant guilty of murder in the first degree.' "

Res ipsa loquitur!

In this connection it is interesting to observe the recent conduct of the district attorney and district judge at Craig, Colorado, when Raymond Gray was convicted of first degree murder with life imprisonment as the punishment. Gray confessed, according to the district attorney, with the understanding that the penalty would "go light".

Judge Charles E. Herrick instructed the jury,

"* * * if you believe that he confessed, acting under the impression that he had been promised he would not receive the supreme penalty, then I say our word should be as good as our bond. We should keep faith."

The district attorney, the district judge and the jury are to be congratulated on their enforcement of the law in Craig.

Yours very truly,

PHILIP S. VAN CISE